

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Tidewater Communications, Inc.)	File Number EB-01-NF-276
Owner of Antenna Structure No. 1028287)	NAL/Acct. No. 200232640001
Chesapeake, Virginia 23320)	FRN: 0003-3044-90

FORFEITURE ORDER

Adopted: May 9, 2002**Released: May 13, 2002**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Tidewater Communications, Inc. (“Tidewater”) for willful violation of Section 17.51(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Tidewater’s failure to exhibit lighting on its Windsor, Virginia antenna structure.

2. On December 12, 2001, the Commission’s Norfolk, Virginia Resident Agent Office (“Norfolk Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”),² finding Tidewater apparently liable for a forfeiture in the amount of \$10,000 for willful violation of Section 17.51(a) of the Rules. On January 11, 2002, Tidewater filed a response.

II. BACKGROUND

3. On November 6, 2001, the Norfolk Office received information originating from a Navy pilot’s report that there was an unlit antenna structure in Windsor, Virginia. After confirming this report by visual inspection on the same day, a Resident Agent from the Norfolk Office ascertained that the antenna structure, Antenna Structure Registration (“ASR”) Number 1028287, belonged to Tidewater.

4. On November 16, 2001, the Norfolk Office issued a *Notice of Violation* (“NOV”) to Tidewater. First, the NOV cited apparent violation of Section 17.51(a) of the Rules, which requires an owner to exhibit red obstruction lighting. Second, it cited apparent violation of Section 17.47(a) of the Rules,³ which requires an owner to (1) observe antenna structure lights at least once every 24 hours either

¹ 47 C.F.R. § 17.51(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232640001 (Enf. Bur., Norfolk Office, rel. Dec. 12, 2001).

³ 47 C.F.R. § 17.47(a).

visually or by an automatic indicator of lighting failure, or (2) provide a properly maintained automatic alarm system indicating lighting failure. On November 30, 2001, Tidewater filed a response to the *NOV*.

5. On December 12, 2001, the Norfolk Office issued an *NAL* for the Section 17.51(a) violation. In its January 11, 2002 response to the *NAL*, Tidewater states that, pursuant to Section 17.47(a) of the Rules, it observes the antenna structure's lights at least once every 24 hours by means of an automatic light system, that includes an alarm. Tidewater notes that, after being notified of the lighting failure by telephone from the Resident Agent, it found that the alarm did not indicate an outage of the lighting and that the alarm itself did not otherwise appear to be malfunctioning. Tidewater further explains that its retained independent contractor subsequently found and repaired several system components, accounting for both the failure of the lighting and the failure of the alarm system.

6. Tidewater argues that the failure of the alarm system does not show willful violation of Section 17.51(a) of the Rules in the sense of a conscious or deliberate commission or omission of an act, but rather shows inadvertence. Tidewater cites *Vernon Broadcasting*,⁴ in which the Commission canceled a forfeiture for a fencing violation because there was no indication that the licensee was aware of the violation or had failed to monitor the condition of the site prior to the Commission's inspection. Tidewater also submits that there is no probative and acceptable evidence that the violation was repeated apart from the one day that the Navy pilot and the Norfolk Office Resident Agent observed the antenna structure on November, 6, 2001. Finally, Tidewater maintains that imposition of the base amount forfeiture of \$10,000 for this type of violation under Section 1.80(b)(4)⁵ is too high and claims that the Norfolk Office did not consider its good faith or voluntary disclosure, and its history of overall compliance.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁸ In examining Tidewater's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹

8. Tidewater does not contest that the antenna structure lights were unlit on November 6, 2001. Rather, it argues that the outage was not willful because its automatic light system and alarm malfunctioned and therefore failed to indicate that the outage had occurred. Pursuant to Section 17.47(a)(1) of the Rules, an owner is required to observe the antenna structure's lights at least once every 24 hours either visually or by observing a properly maintained automatic indicator that registers any

⁴ *Vernon Broadcasting, Inc.*, 60 RR 2d 1275 (1986).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(D).

failure of the lights; or, pursuant to Section 17.47(a)(2) of the Rules, an owner is required to provide a properly maintained automatic alarm system designed to detect any failure of the lights and to provide indication of such failure to the owner.

9. Tidewater presents no evidence, or even claims, that it has ever inspected its automatic light system and alarm equipment prior to the light outage and the tower inspection by the Norfolk Office. Moreover, contrary to its intentions, Tidewater's reliance on *Vernon Broadcasting* is unavailing, because there the damage to the antenna structure fencing occurred shortly after the owner had last inspected the facility and just prior to the Commission's inspection that detected the violation.¹⁰ Accordingly, we reject Tidewater's argument that the lighting outage was not willful due to the failure of its automatic light system and alarm.¹¹

10. Tidewater's claim that there is no showing of repeated violations beyond the single day the outage was observed is immaterial. The *NAL* alleged that Tidewater's act was willful and did not reach the question of whether it was repeated.

11. Finally, Tidewater's argument that the forfeiture should at least be reduced is not persuasive. The base forfeiture amount for this violation is \$10,000.¹² Tidewater presents no showing of good faith beyond what we have already considered as inadequate to overcome a finding of willfulness. Furthermore, the only indication of voluntary disclosure occurred after the outage was detected. Moreover, Tidewater does not have a history of overall compliance with the Commission's Rules.¹³ Consequently, in this case, we will impose the originally proposed forfeiture of \$10,000.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Tidewater Communications, Inc, IS LIABLE FOR A MONETARY FORFEITURE in the amount of ten thousand dollars (\$10,000) for failure to exhibit obstruction lighting on its antenna structure in willful violation of Section 17.51(a) of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232640001 and FRN 0003-3044-90. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

¹⁰ The Commission found the violation was not willful because the licensee monitored the condition of the antenna site through regular inspections, and to the extent that the licensee found the fence to be in good condition during its inspection of the antenna site shortly before the Commission inspection, the licensee was unaware of the violation.

¹¹ See *Eure Family Limited Partnership*, 16 FCC Rcd 21302 (Enf. Bur. 2001); *recon. denied*, DA 02-878, rel. April 17, 2002.

¹² See 47 C.F.R. § 1.80(b)(4), *Note to Paragraph (b)(4): Guidelines for Assessing Forfeitures*.

¹³ See *Tidewater Communications*, 11 FCC Rcd 7814 (1996); *recon. denied*, 12 FCC Rcd 11830 (1997).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail - Return Receipt Requested - to Tidewater Communications, Inc., 870 Greenbrier Circle, Suite 399 Chesapeake, Virginia, 23320, and to its counsel, Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau